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C O N F I D E N T I A L SANTIAGO 000339

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SUBJECT: CHILE PREPARES ITS CASE IN MARITIME DISPUTE WITH
PERU

REF: A. 08 SANTIAGO 77
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Classified By: Deputy Chief of Mission Carol Urban for reason 1.4 (b).

11. (C) Summary: Now that Peru has presented its case about the disputed maritime border with Chile, Chile has a year to study Peru's arguments and make their own case at the International Court of Justice. According to Chile's Director for Border Affairs, Chile plans to point to treaties and agreements dating from the 1950s which gave it rights to fish in waters up to the 18th parallel. President Bachelet has taken a keen interest in the issue, which continues to garner periodic outburst of heavy press attention and serves as an irritant to Chile-Peru relations. End Summary.

Chile-Peruvian Maritime Border 101

12. (C) The Peruvian-Chilean maritime border was established in 1952 and 1954 agreements between Chile, Peru, and Ecuador, Ambassador Maria Theresa Infante, MFA Director for Border Affairs, asserted during an April 2 conversation with DCM and Poloff. Despite being "more territorial" than Chile, Peru respected the agreement for many decades, she explained. In fact, from 1952 through the 1990s more than 20 agreements on maritime issues, particularly concerning whales and fishing, were signed between Peru and Chile. Peru attempted to negotiate for greater fishing areas in the 1970s, but without success, she said.

13. (C) Peru began pressing Chile on the border in the 1980s, asserting that there was no agreement on the maritime frontier. However, Peru never made any official proposal to Chile at this time, Infante noted. In 1986, Peru sent Juan Miguel Bakula, an ex-ambassador, as an informal envoy to discuss border issues. Officially, Bakula was working in a personal capacity, but Chile understood him to have the backing of the Peruvian MFA. Bakula's efforts failed to yield an agreement. Peruvian pressure to re-visit the issue disappeared in the 1990s, but returned in 2000. Beginning in 2000, Peru and Chile exchanged a series of diplomatic notes about the border, in which Peru insisted that there was no agreement defining the maritime border and Chile asserted that the 1952 and 1954 border agreements were definitive. The failure to reach an understanding via these notes led Peru to file its case with the International Court of Justice (ICJ) in 2008.

14. (C) Some Chilean analysts believe that current Peruvian president Alan Garcia wanted to keep the border dispute on

the back burner, Infante suggested. However, doing so was not politically feasible because it would have created the impression that Garcia was backtracking: Garcia's predecessor, Alejandro Toledo, had signed a law in 2005 setting the foundation for maritime border negotiations with Chile.

Chile's Case

¶5. (C) Both Chile and Peru believe that historical precedents are on their side, Infante noted. The 1952 agreement and subsequent fishing agreements treat the disputed waters as Chilean, she asserted. In 1976, the Pinochet government entered negotiations with Bolivia about a possible agreement to trade some Bolivian territory for a sovereign corridor to the ocean. Although the negotiations fizzled, Peru never objected to Chile's presumed right to determine the fate of land or sea in the northern Chilean areas they now claim, seemingly indicating that they accepted these areas as Chilean at the time. Chile believes that its position is backed by academic opinions on border demarcation gathered by the American Society for International Law, which generally call for maritime borders to follow latitudinal parallels.

¶6. (C) Infante described Peru's case as relying largely on the 1982 UN Law of the Sea Convention. The convention says that maritime borders should be established with reference to the trajectory of land borders and equidistant from the land of the two disputing nations. Peru argues that the two nations should sign a border agreement which follows these principles, while Chile insists that valid agreements have been in place since the 1950s and should not be changed retroactively.

A Political Issue, Not a Border Issue

¶7. (C) Chile would prefer to keep the border dispute a purely legal issue, but Peruvian politicians and the press in both countries are preventing this, Infante said. The contested border is a very political issue in Peru, motivated largely by "territoriality" and the political dividends that accrue from nationalist rhetoric there. Infante was somewhat forgiving of Peru's decision to take the case to the ICJ, noting that relying on judicial decisions was a peaceful way to resolve disputes. While Chile and Peru still have good relations overall, the Hague case had "chilled the friendship" a bit, she allowed, and both countries needed to be careful that the dispute doesn't spill over into the bilateral relationship as a whole. Similarly, Chile does not/not want to involve other countries in the dispute.

¶8. (C) Aside from national pride, loss of the maritime area would lead to substantial loss in revenue and livelihood for local Chilean fishermen, who depend on the region's rich fisheries--including the disputed 38,000 square kilometers--for their livelihoods. Infante stated that a loss could also jeopardize the economic future of the city of Arica. Arica is essentially a port town, Infante said, and the proposed new border would make it far more difficult for ships to reach the port through Chilean waters.

Broad Input into Chile's Strategy

¶9. (C) Infante and her staff have been soliciting a broad range of input to help prepare their case at the Hague and manage the political consequences of the dispute. She noted that she and Foreign Minister Fernandez had recently met with many of the former Foreign Ministers to get their perspectives on the dispute. They were largely focused on the political ramifications, she said. Chile has an international team of specialized lawyers advising them on their legal strategy, including one who she described as a former State Department employee. President Bachelet has

recently taken a keen interest in the topic. On April 8, she canceled planned travel to northern Chile to hold a three-hour meeting with Foreign Minister Fernandez, who had just returned from meeting with European legal advisors in Paris.

¶10. (C) President Bachelet has decided that the MFA should not meet with presidential candidates or political parties about the border dispute. However, Infante and the MFA team have met with advisors to the presidential candidates, and they plan to start working closely with the new president-elect immediately after the election. (Note: Chile's deadline to present its case to the Hague falls in the same month as the inauguration of Chile's next president. End Note.) The Alianza and Concertacion coalitions largely agree on how to approach the issue, Infante added.

Local Level Cooperation at the Border

¶11. (C) Starting in 1985, Chile and Peru tried repeatedly to reach an administrative agreement that gave Peru some ability to process goods. The two countries finally reached an agreement in 1999, and the Peruvian government now has a customs office at the port in Arica which handles goods which are taken directly to Tacna, in southern Peru. Police, customs, and other local officials from Tacna and Arica meet regularly to discuss issues and enhance cooperation. Infante says that these arrangements work well and have helped to reduce tensions at the local administrative level along the border.

¶12. (C) Commerce along the border is important to both countries, Infante noted. Not only do goods bound for southern Peru enter at Arica, but many Chileans shop in Tacna, where prices are generally lower. Chile has no/no interest in impeding this border trade, she emphasized.

The Way Ahead

¶13. (C) According to Infante, a decision in the border dispute is not likely until 2012 or later. Chile will present its side to the ICJ in March 2010. In October/November 2010, Peru will have the opportunity to present a rejoinder, and Chile can present its rejoinder in June 2011. Hearings on the case, which normally last three weeks, will be held in 2012. Chilean officials have said publicly that Chile will respect the court's decision.

Comment

¶14. (C) While referring the case to the Hague may have been intended as an effort to de-politicize the issue and reach a fair resolution, Peru's insistence that the maritime border is undefined rankles Chileans from government officials to the local public. Each step in the lengthy ICJ process garners substantial coverage, as does the sometimes inflammatory statements of Peruvian officials or press. Chilean leaders feel confident that they will prevail. Nonetheless, they are frustrated both that Peru persisted in raising an issue they considered resolved and that, now raised, frequent eruptions of public attention and inflammatory remarks prevent a quiet, judicial resolution.

End Comment.

SIMONS